

FILED
2008 MAR 24 PM 2:23
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 **DEMETRIUS L. HARVEY**
2 **IN PRO PER**
3 **360 SO. HELM AVENUE**
4 **FRESNO, CA 93727**
5 **TELEPHONE: 559-255-1971**

6 **UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

8 **DEMETRIUS L. HARVEY**

9 **Plaintiff**

10 **v.**

11 **CITY OF OAKLAND, a municipal**
12 **corporation; OAKLAND POLICE**
13 **DEPARTMENT; WAYNE TUCKER,**
14 **Chief, Oakland Police Department**
15 **DEPUTY CHIEF HOWARD JORDAN**
16 **OAKLAND POLICE LIEUTENANT**
17 **GIER, OAKLAND POLICE**
18 **LIEUTENANT WHITMAN,**
19 **OAKLAND POLICE OFFICER**
20 **DOMINIQUE AROTZARENA,**
21 **OAKLAND POLICE OFFICER J.**
22 **MORRIS, OAKLAND POLICE**
23 **OFFICER MUSCHI, OAKLAND**
24 **POLICE OFFICER GUTIERREZ,**
25 **in their official and individual capacities,**
26 **DOES 1 through 50, inclusive.**

27 **Defendants.**

CASE NO. C07 - 01681 SBA

PLAINTIFF'S INITIAL CASE
MANAGEMENT CONFERENCE
STATEMENT

LOCAL RULE 16-9

Date: April 2, 2008
Time: 2:30 p.m.
Dept: Courtroom 3, 3rd Floor

The Honorable Sandra Brown Armstrong

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Plaintiff filed the following initial case management conference statement before the
Honorable Judge Martin Jenkins on November 5, 2007. This was vacated due to the reassignment
of this case. Defendants have filed their separate initial case management conference statement.

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7 **1. Jurisdiction and Service:**

8 This action is under U.S.C. 42 Section 1983. Jurisdiction is based on under 28 U.S.C.
9 Section 1391 (b) and the court has supplemental jurisdiction over state law claims under 28 U.S.C.
10 Section 1367. All defendants have not been served and none of the named defendants have
11 answered. According to Plaintiff's records, Defendant Dominique Arotzarena and Defendant
12 Officer Gutierrez were not served.

13 **2. Facts:**

14 **Plaintiff's Version:**

15 On December 27, 2005, at approximately 11:30 p.m. police officers from the
16 Fresno Police Department did a vehicle stop on Freeway 180 for speeding and no license
17 plate. Officer Erik Castillo demanded that the driver show his driver's and car registration.
18 The driver was never ticketed for any violation. Plaintiff was a passenger and Officer
19 Castillo demanded his identification. Officer Castillo checked Plaintiff's identification and
20 told him he was under arrest due to an arrest warrant in Alameda County. Plaintiff told the
21 officers that they were arresting the wrong person.

22 Officer Castillo handcuffed Plaintiff behind his back and hauled him back to
23 the Fresno County Jail. Plaintiff was detained against his will and again told the officers that
24 they had arrested the wrong person. Officers told Plaintiff they were detaining him until the
25 Oakland Police transport him back to Oakland on robbery charges.

26 On December 30, 2005 at approximately 10:00 a.m. Plaintiff was placed into
27 custody of Oakland police officers, Muschi and Gutierrez, was transported back to
28

1 Oakland. Plaintiff told Oakland officers they had arrested the wrong person. Both officers
2 ignored him and would not listen. Plaintiff was escorted to an interview room by the
3 officers.

4 Different officers came into the room and Officer Arotzarena told Plaintiff that
5 he was charged with crimes he had committed at liquor stores. Oakland police investigators
6 identified Plaintiff as one of the suspects and that he was caught on video tape. Plaintiff
7 repeatedly told Officer Arotzarena and Doe Defendant, they had arrested the wrong person.
8 Plaintiff did not waive his constitutional rights and refused to answer questions.

9 After refusing to answer questions, Officer Arotzarena played the entire video
10 tape of the alleged suspect who went behind the counter near the victims. At that
11 point, Officer Arotzarena and Doe Defendant knew or should have known that the plaintiff
12 was not in the video and should have released him. Plaintiff demanded his release and was
13 denied. Officer Arotzarena told Plaintiff's father, Richard Harvey by phone that "your son
14 was not in the video, but because he would not answer any questions, we're going to hold
15 him anyway." This is a clear violation of Plaintiff's constitutional and civil rights.

16 The officers still charged, booked, finger-printed, photographed and placed
17 plaintiff in custody for crimes someone else committed on November 23, 2005. Plaintiff was
18 jailed in North County Jail and later transported to Santa Rita jail in Dublin, California. In
19 both places, he was detained against his will.

20 In all three jails, plaintiff was subjected to degrading and humiliating visual
21 body cavity strip searches.

22 Plaintiff was finally released from Santa Rita jail after being bailed out on
23 approximately January 8, 2006, more than ten days in custody after being arrested in Fresno.

24 On March 23, 2006, all charges were dismissed against Plaintiff before the
25 Honorable Judge Morris Beatus.

26 **3. Legal Issues that are in dispute:**

- 27 a. Whether the actions of the Defendants constituted a violation of plaintiff's
28 constitutional rights pursuant to 42 U.S.C. section 1983;

b. Whether Plaintiff can establish a Monell claim, including:

- 1). whether the Defendants policies, practices, and customs were unconstitutional,
- 2). whether the Defendants training, supervision and discipline of the officers were constitutionally deficient.

c. Whether the defense of qualified immunity applies;

d. Whether the Defendant City of Oakland have respondeat superior for unconstitutional actions/conduct by their law enforcement officers.

e. Whether the officer(s) are liable for punitive damages.

Plaintiff's causes of actions include violation of 42 U.S.C. Section 1983 against Defendants for violation of his rights, as guaranteed by the fourth, fifth, and fourteenth amendments by the US Constitution and for Monell violations. Plaintiff also alleges state law causes of action, including false arrest, false imprisonment, negligence, negligent infliction of emotional distress, and violation of the California Constitution, Article 1, sections 13 and 7(A).

4. Motions:

There are motions pending before the court by Defendants. Plaintiff anticipates motions to be filed on his behalf during litigation.

5. Amendment of Pleadings:

Plaintiff may need to amend the Complaint to name others and Oakland Police Officers who were in violation of the Plaintiff's Constitutional rights depending on the defendants' initial disclosures and discovery.

6. Evidence Preservation:

Plaintiff has retained evidence known to him and no evidence will be destroyed or lost during this litigation.

7. Disclosures:

Plaintiff will prepare and exchange his initial disclosure statements pursuant to the Federal Rules of Civil Procedure.

8. Discovery:

Plaintiff anticipates discovery pursuant to the Local and Federal Rules. Plaintiff also

1 anticipates written discovery after Defendants' initial disclosures, which will include Requests
2 for Admissions, Requests for Production of Documents, Special Interrogatories, and Depositions.

3 **9. Class Action:** No

4 **10. Related Cases:**

5 As of this date, Plaintiff has no knowledge of any related cases in this matter.

6 **11. Relief:**

7 Plaintiff seeks General and Special Damages in amounts proven at trial; punitive and
8 exemplary damages against officers, in amounts proven at trial; and costs and attorney's fees.
9 Public apology from all Defendants and for such other and further relief as the Court may deem
10 just and proper.

11 **12. Settlement and ADR:** Plaintiff anticipates that he will be able to discuss settlement after
12 discovery and depositions have been conducted of the Defendants.

13 **13. Consent to Magistrate Judge for all purposes:** Plaintiff does not consent to Magistrate
14 Judge for all purposes.

15 **14. Other reference:** This case is not suitable for reference to binding arbitration, a special
16 master, or the Judicial Panel on Multidistrict Litigation.

17 **15. Narrowing of Issues:** Not at this time.

18 **16. Expedited Schedule:** Not at this time.

19 **17. Scheduling:** Plaintiff requests a trial date in September 2008 or October 2008.

20 **18. Trial:** Plaintiff have demanded a jury trial, 3-5 days for the trial.

21 **19. Disclosure of Non-Party Interested Entities or Persons:** To be determined predicated
22 on discovery. Plaintiff will file a separate disclosure if needed under Local Rules.

23 **20. Other matters:** None at this time.

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25
26 Dated: March 21, 2008

27 /s/
Demetrius L. Harvey, Pro Per

CERTIFICATE OF SERVICE

Demetrius L. Harvey

CASE NO. CO7- 01681 SBA

Plaintiff,

vs.

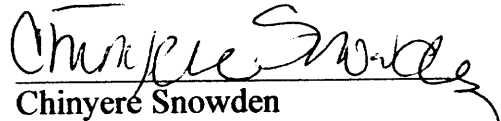
City of Oakland, et al

Defendants.

I, the undersigned, hereby certify that I am over eighteen years of age and not a party to the above-entitled action.

That on March 21, 2008, I served a true and correct copy of the attached: **PLAINTIFF'S INITIAL CASE MANAGEMENT CONFERENCE STATEMENT** by placing such paper(s) in a postage paid envelope to the person listed below, by depositing said envelope in the U.S. Mail.

Rachel Wagner
ONE FRANK H. OGAWA PLAZA, 6TH FLOOR
OAKLAND, CALIFORNIA 94612


Chinyere Snowden
360 S. Helm Ave.
Fresno, Ca. 93727

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